

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10218 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

RANCHHODBHAI PARSHOTTAMDAS PATEL

Versus

STATE OF GUJARAT

Appearance:

MR NS DESAI for Petitioner

MR SP DAVE, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 22/01/97

ORAL JUDGEMENT

Rule. Learned Govt. Counsel Mr.S.P.Dave waives the service of Rule for the respondents.

The orders impugned in the present petition happen to be the orders pronounced by Shri N.D.Mistri, Deputy Collector, Petlad, in Tenancy Case No. 3 of 1996,

dated November 26, 1996.

The necessary proceedings under Section 65 of the Bombay Tenancy and Agricultural Lands Act, 1948 came to be instituted in respect of the land bearing Survey No. 267 admeasuring 0 HA-43 RA-50 situated at village Vasana under the Khambhat Taluka of Kheda District. It was an apprehension on the part of the learned Deputy Collector that the above said land is not being cultivated and is not put to the full and efficient use and, therefore, the present proceedings under Section 65 of the Act of 1948 were required to be instituted. Even when a reference is made to the orders pronounced by the said authority, it is clear that the caption of the orders shows the name of only the present petitioner. In other words, though the village form no.7/12 would go to show that, along with the petitioner-Ranchhodbhai Patel, there are other 9 co-occupants no notice came to be issued and served upon them. The whole proceedings came to be completed on the basis of the assumption that, Ranchhodbhai Patel was duly served, but he was not present. The learned Deputy Collector has overlooked the fact that the petitioner, Ranchhodbhai Patel was not the sole occupant of the land in question, but that there are other 9 persons who were the co-occupants of the land and they had vital interest in the said land. It appears that the proceedings have been initiated and completed behind the back of 9 other occupants, rendering the inquiry and the consequent finding, both void and against the Principles of Natural Justice.

Moreover, all the questions which were required to be decided under Section 65 of the Act of 1948 have not been considered and they have not been decided. The impugned orders have been passed, placing reliance upon the say of the village Talati and upon a look to the revenue record. This appears hardly to be permissible under Section 65 of the Act of 1948. Under these provisions, the Government is entitled to declare that the management of the land shall be assumed. Sub-section (2) of Section 65 says that, after the declaration regarding the assumption is made which is, no doubt, conclusive, not only the management, but the land shall also vest in the State Government during the continuance of the management. The provisions, therefore, contained under Section 65 of the Act of 1948 have the serious civil repercussions and consequences. Therefore, there was an added responsibility on the part of the learned Deputy Collector to see that the provisions contained under Section 65 of the Act of 1948 are completed in letters and spirit. This having not done, the only

course open to this Court would be to grant the present petition, to quash and set aside the impugned orders and to re-transmit the entire matter to the learned Deputy Collector, Petlad, with appropriate directions. I order accordingly.

In the result, therefore, the impugned orders shall stand quashed and set aside. The proceedings shall be transmitted to the learned Deputy Collector, Petlad, who would decide the same in accordance with the provisions contained under Section 65 of the Act of 1948, after affording a reasonable opportunity of being heard to all the occupants and to adduce evidence, both oral and documentary, in respect of their say.

I could see a difficulty in the way of the learned Deputy Collector, because even village form no.7/12 does not disclose all the names of the occupants. I, therefore, deem it fit and proper if the present petitioner furnishes the full particulars regarding the names and addresses of all the occupants. This should be done within a period of 10 days hereof. After the above said exercise is completed, the notice shall be issued to all of them and the proceedings would be initiated, once again. The remanded proceedings should be completed within a period of three months from the date of receipt of the writ of the present orders. Rule is made absolute accordingly.
